

## **REMARKS**

Claims 1-15, 17, 18, 20, and 21 are now pending in the application. The Examiner is respectfully requested to reconsider and withdraw the rejection(s) in view of the amendments and remarks contained herein.

### **REJECTION UNDER 35 U.S.C. § 101**

Claims 10-12 and 14 stand rejected under 35 U.S.C. § 101. The Examiner states that “[c]laim 10 provides computational steps for providing a data determining processes that are based on computer processes computations with only steps for sensing, storing, and downloading data that fail to show a clear computation processes and show no clear and concrete and tangible results.” The Examiner further states that “[f]or the result to be tangible it would need to output to a user or processed or stored for later use.” Accordingly, Applicants have amended claim 10 to include the limitation of “wherein a processor accesses data from said database and determines a list of vegetation capable of surviving in the plurality of stored environmental conditions, said processor then provides said list of vegetation to a display device for displaying said list of vegetation to a user.” Accordingly, Applicant submits that the claim now outputs the data to a user, as required. Therefore, reconsideration and withdrawal of this rejection are respectfully requested.

### **REJECTION UNDER 35 U.S.C. § 102**

Claims 1-3, 6-12, 14-15 and 18-23 stand rejected under 35 U.S.C. § 102(b) as being unpatentable over Bjornsson (U.S. Pat. No. 5,621,669, hereinafter “Bjornsson”). This rejection is respectfully traversed.

At the outset, Applicant notes that claims 1, 10, 15, and 21 have been amended to include “a light sensor” (claim 1 and 21), “sensing sunlight intensity” (claim 10) or, “a sunlight intensity sensor” (claim 15). Each independent claim further requires the storage of data from the respective light sensors. Applicant respectfully asserts that this limitation is not present anywhere, nor is it suggested, in Bjornsson. The Examiner references that Bjornsson “discloses the ‘light sensor’ functioning in the ‘solar cell’ contained within the probe module in line 5 of column 10.” However, this cite appears incorrect as there is no mention of a “solar cell” on line 5 of column 10. Applicants believe the Examiner meant to refer to lines 3-5 of column 15, which recites “[m]ore locally connected or internal batteries, gas or fluid operated turbines, solar cells, and other power sources can also supply supplemental or full power for the operation of the sensor probe.” According to this recitation, the “solar cell” is only suggested as a potential or alternative power source and is not suggested for use as a light sensor for providing data to be stored, as claimed.

Since disclosure of a light sensor for providing data to be stored is clearly lacking in Bjornsson, Applicant submits that the current rejection under 35 U.S.C. §102(b) has been overcome by the amended claims. Applicant further submits that any rejection formed by the Examiner under 35 U.S.C. §103 is inappropriate as well.

Specifically, Applicant notes that it does not seem possible to include a light sensor in the sensor probe disclosed in Bjornsson, as the sensors all appear to be positioned underground when in use. Specifically, when referencing the different sensors used, Bjornsson states “[s]ensor 20 is a capacitive impedance-type soil volume moisture sensor.” Sensor 18 is a conductivity sensor. The Examiner asserts that

Bjornsson discloses a “temperature sensor 18” that “can sense heat an indicator of heat produced by the ‘sunlight intensity’ radiation in Figure 1 in the earth.” It appears the Examiner meant to reference temperature sensor 16, since sensor 18 is a conductivity sensor. However, Applicants submit that the assertion that a temperature sensor is a light sensor is not a reasonable interpretation since the probe of Bjornsson is an underground probe that is sheltered from light. Further, Applicants do not know of any correlation between ground temperature and sunlight, since the ground temperature is generally constant over short durations of time and is also influenced by the ambient air temperature. Therefore, Applicants request that the Examiner reconsider the interpretation of an underground temperature sensor serving as a “light sensor.”

Sensor 16 is a thermistor temperature sensor. “Sensor 14 is a combination electrode type pH sensor.” (col. 13, lines 45-50). As stated above, all of these sensors appear to be underground soil sensors and therefore would result in the probe being positioned underground. Therefore, it does not appear to be possible or desirable to sense light using the probe of Bjornsson.

Further, any probe taught by Bjornsson actually appears to teach away from a probe incorporating a light sensor due to its underground nature. It is established that where references, instead of suggesting the invention, seek or warn to avoid the suggestion, such references diverge from and teach away from the invention at hand and it is error to find obviousness based on such references. In re Fine, 837 F.2d 1071, 1074, 5USPQ2d 1596, 1599 (Fed. Cir. 1988) (citing W.L. Gore & Assocs. v. Garlock, Inc., 721 F.2d 1540, 1550, 220 USPQ2d 303, 311 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984)).

In view of the arguments above, Applicant asserts that the rejections of independent claims 1, 10, 15, and 21 under §102(b) in view of Bjornsson are clearly inappropriate and any rejection under §103 would be improper as well. As such, Applicant submits that all claims are currently in condition for allowance.

**ALLOWABLE SUBJECT MATTER**

The Examiner states that claims 4, 5, 13 and 17 would be allowable if rewritten in independent form. However, in view of the amendments to claims 1, 10, and 15 and the arguments set forth above, Applicant respectfully submits that claims 4, 5, 13, and 17 are in condition for allowance, as they depend from claims 1, 10, and 15 respectively.

**CONCLUSION**

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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